IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2171 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANBHAI SHANKARBHAI PATEL - Petitioner(s)

Versus

M V VAIDYA & 4 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged an order dated 11-12-1995 passed by the Deputy Secretary(Appeals), Revenue Department, Government of Gujarat. The petitioner claims to be holding certain agricultural land. The petitioner wanted to put the

said land to non-agricultural use. The petitioner appears to have already put some construction thereon. He therefore, applied to the Taluka Development Officer for regularisation of construction and to grant ex post facto “NA Permission”. The Taluka Development Officer granted such a permission by his order dated 19-04-1995. It appears that respondent no.4 herein objected to such regularisation of construction. He therefore, approached the State Government and challenged the order passed by Taluka Development Officer. The Deputy Secretary thereupon passed order dated 11-12-1995 and set aside the order passed by Taluka Development Officer. The main features of the order of the Deputy Secretary were that there were two separate 7/12 abstracts in which the measurements of the land did not tally. The Deputy Secretary found that Taluka Development Officer did not go into the question of discrepancy in the measurements. It was further observed that under sections 65 and 66 of the Bombay Land Revenue Code, before granting permission for construction, the land should be in the name of the applicant. This aspect has not been borne in mind by Taluka Development Officer. It was also observed that the land in question is Vada land and the powers to

regularise the construction thereon is with Mamlatdar or Collector and not with Taluka Development Officer.

2.The learned advocate Shri B.S.Patel for the petitioner submitted that the land in question in which the construction has been put up, which is sought to be regularised is an agricultural land of the petitioner and it is not categorised as Vada land and that the petitioner has not encroached on any Government land. He therefore, submitted that it is Taluka Development Officer which can examine the issues and take a decision.

3. The observations of the Deputy Secretary however, with respect to the discrepancy in th measurements of the land are not satisfactorily replied by the petitioner. Considering all these aspects of the matter and bearing in my mind the observations made by the Deputy Secretary in his impugned order, I find that though the order passed by Taluka Development Officer cannot be revived since there were certain procedural irregularities noted therein, however ends of justice would meet, if the petitioner is permitted to make fresh application to the Taluka Development Officer with necessary material in support of his application.

The Taluka Development Officer shall process such an application and will go into the question whether the land on which the petitioner has put up the construction which is sought to be regularised, is his own agricultural land as opposed to Vada land and whether the petitioner has encroached on any other land. Only if Taluka Development Officer comes to the conclusion that it is not Vada land or that there has been no other encroachment, that the application of the petitioner shall be examined on merits. On the other hand if Taluka Development Officer comes to the conclusion that the land in question is Vada land or that the petitioner has encroached any Government land, Taluka Development Officer shall communicate his decision to the petitioner in this regard and it will be open for the petitioner to approach appropriate authority for regularisation. The Taluka Development Officer shall take an independent decision.

4. With these directions, the petition is disposed of. Rule is made absolute to the limited extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)